



Paper No. 13

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INTELLECTUAL PROPERTY ADMINISTRATION
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In re
Movagher et al.
Reissue Application No. 09/982,327
Filed: October 17, 2001
Reissue of Patent No. 5,998,786
Original Issue Date: December 7, 1999
Attorney Docket No. 10960502-8

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the "PETITION TO ACCORD THE PROPER FILING DATE," filed November 12, 2003, requesting that the above-identified application be accorded a filing date of October 17, 2001, rather than the presently accorded filing date of February 21, 2002. The petition was recently forwarded to the undersigned for consideration.

The petition is **GRANTED**.

Application papers in the above-identified reissue application were received in the Office on October 19, 2001 by way of deposit on October 17, 2001 with the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS). On November 29, 2001, a Notice to File Missing Parts of Reissue Application - Filing Date Granted was mailed in this application. Accordingly, the Notice stated that a filing date of October 17, 2001 had been accorded to the reissue application; however, the signature of Mark Diel was missing from the oath or declaration and the reissue specification was not in double-column format.

In response, on February 21, 2002, applicants responded with the required items. Then, on October 18, 2002, the Office mailed a filing receipt showing a filing date of February 21, 2002.

Petitioner maintains that the above-identified application was deposited in the United States Postal Service (USPS) Express Mail Service on October 19, 2001, and thus, is entitled to that date as the filing date of the application. In support thereof, petitioner submitted copies of the Application Transmittal, bearing Express Mail mailing label No. EV668678953US; the "Express Mail" mailing label No. EV668678953US, bearing a date-in of October 17, 2001; a date-stamped return postcard, showing that the application papers, including a copy of the prior patent and additional claims for the application assigned Application No. 09/982,327, were received in the Office on October 17, 2001; and the Official filing receipt mailed October 18, 2002, showing a filing date of February 21, 2002.

The instant evidence is persuasive and establishes as required under

§ 1.10(c)¹ that the instant reissue application is entitled to a filing date of October 17, 2001. (However, it is noted that the petition was not filed until more than a year after receipt of the filing receipt showing a filing date of February 21, 2002).

Nonetheless, the issue of promptness of the petition under § 1.10 is not controlling. Even if the petition was found to be not timely filed or the evidence on petition was not considered persuasive, the record supports a conclusion that the application is entitled to a filing date of October 17, 2001. In order to be complete for filing date purposes, all applications filed under 37 CFR 1.53(b) must include a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to 37 CFR 1.71 and at least one claim pursuant to 37 CFR 1.75, and any drawing required by 37 CFR 1.81(a). The statutory filing fee and an oath or declaration in compliance with 37 CFR 1.63 (and 37 CFR 1.175 (if a reissue) or 37 CFR 1.162 (if for a plant patent)) are also required by 37 CFR 1.51(b) for a complete application, but the filing fee and oath or declaration may be filed after the application filing date upon payment of the surcharge set forth in 37 CFR 1.16(e). See 37 CFR 1.53(f). As reflected in the Notice mailed November 29, 2001 (and further supported by applicant's return postcard receipt), the papers received in the Office on October 19, 2001 by way of deposit on October 17, 2001 with the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) were entitled to a filing date. The Office erred in changing the filing date to the date of receipt of the items required by the Notice mailed November 29, 2001.

No petition fee is required and none has been charged.

The application filing date will be corrected to October 17, 2001 and a corrected filing receipt will be mailed.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

¹ § 1.10(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.